

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 30, 2018**

Diane M. Fremgen  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP1620-CR**

**Cir. Ct. No. 2014CF4434**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TERRANCE A. LEWIS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: DENNIS P. MORONEY and JEFFREY A. WAGNER, Judges. *Affirmed.*

Before Brennan, P.J., Kessler and Brash, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Terrance A. Lewis appeals a judgment convicting him of armed robbery, as a party to a crime, and taking and driving a vehicle without the owner's consent. He also appeals the circuit court's order denying his motion for postconviction relief. Lewis argues that the circuit court misused its discretion because it used an incorrect legal standard when it imposed his sentence. We affirm.

¶2 Sentencing decisions are committed to the circuit court's discretion, and appellate review is limited to considering whether the circuit court misused its discretion. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A circuit court properly exercises its discretion when its decision shows a process of reasoning that is based on the facts of the record and proper legal standards. *Id.*, ¶19. When the circuit court bases a discretionary decision on an error of law, the court misuses its discretion. *State v. Hutnik*, 39 Wis. 2d 754, 763, 159 N.W.2d 733 (1968).

¶3 Lewis contends that the circuit court misused its discretion because it expressly rejected the legal standard set forth in *McCleary v. State*, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971), requiring courts to sentence defendants to the minimum amount of custody necessary to achieve the sentencing objectives. Lewis points to the following portion of the sentencing hearing:

Mr. Jensen: [I]n deciding the minimum amount, I think it's really important for the Court to consider who is the person who comes out at the other end of the sentence ....

The Court: I think you're using the word "minimum" improperly. It's called the least restrictive sentence that the Court can have.

Mr. Jensen: Well....

The Court: Ba-ba-ba. Least restrictive. That does not necessarily mean minimum. Nor does it mean maximum. But it's the least restrictive that the Court believes is appropriate. So let's not be talking about a standard which is not the standard. That what I just said is the standard after consideration of his character, the egregiousness of the offense, and the need to protect society. So don't be talking the wor[d] "minimum" necessarily, it's "least restrictive sentence." That's the measure.

¶4 The circuit court said that it would sentence Lewis to "the least restrictive sentence" appropriate based on the need to protect the public, the gravity of the offense and Lewis's character. In contrast, the *McCleary* court said that a court should impose "the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant." *Id.*, 49 Wis. 2d at 276. There is no substantive difference between the "minimum sentence" and the "least restrictive sentence" as the circuit court used the terms. Although the circuit court's insistence that the standard was "the least restrictive sentence" was not technically correct, the circuit court in fact applied the correct standard. Therefore, we reject Lewis's argument that the circuit court misused its discretion by basing the sentence on an error of law.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

